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1. *National*

Supreme Court Judicial Interpretation on Rescinding Mortgage Registration

On 17 November 2003, Supreme People's Court released its Reply to the Question of Whether Administration of Real Estate May Revoke its Erroneous Decision of Rescinding Mortgage Registration

(“最高人民法院于房地产管理机关能否撤销错误的注销抵押登记行为问题的批复”), which was adopted on 14 October 2003 and has taken effect as of 20 November 2003. In the Reply addressed to High Court of Guangxi Zhuang Autonomous Region, Supreme Court gives affirmative answer to the question by providing that real estate administration may revoke its erroneous decision of rescinding mortgage registration.

www.court.gov.cn

Supreme Court Draft Judicial Interpretation on Transfer of Land Use Right

Recently, Supreme People's Court published its draft Interpretation of Certain Issues Regarding Rules Applied to Adjudication of Contract Disputes Involving Transfer of Land Use Right for State Owned Land

(“关于审理国有土地使用权转让合同及相关纠纷案件适用法律若干

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问题的解释”) inviting comments. The draft deals with transfer contract mainly from 2 aspects: effectiveness and real estate development contract.

With reference to effectiveness of the contract, the parties may not contest its validity on the ground that the alteration registration of land use right has not been effected. Further, deficiencies prejudicing the validity of contract, such as failure to obtain government consent to transfer and lack of qualification for investment in land development, may be cured before a complaint challenging the validity of the contract is filed.

As to real estate development, in addition to issues arising out of this kind of contract, the draft invests much effort to distinguish real estate development contract from contract of real estate lease, contract of land use right transfer and loan agreement. (www.court.gov.cn)

SAT to Adjust 6 Items of Tax

Recently, State Administration of Taxation disclosed that the Administration was considering reform of the existent tax regime with a view to facilitating merger and acquisition conducted by foreign investors. The items concerned include VAT, business tax, stamp duties, deeds, income tax for domestic-invested enterprises, income tax for enterprises with foreign investment and foreign enterprises. The proposed amendments will cut down tax burden in the case of M&A, including reducing the VAT occurred, exempting the en bloc transfer of assets and shares from business tax, keeping the stamp on capital account continuously valid, and abolishing deeds for transfer of shares. (www.people.com.cn)

SAT Circular on Export Tax Rebate of Pesticide

On 22 October 2003, State Administration of Taxation released Circular on Policies Applied to Pesticide in Respect of Export Tax Rebate (“关于农药出口退税政策的通知”). According to this circular, considering pesticide will be no longer exempted from production VAT as of 1 January 2004, the 11% export tax rebate rate will be applied to pesticide products as of the same date with a view to encouraging exportation. (www.law-lib.com)

SAT Circular on “Two Intensiveness” Preferential Policies to FIE

On 7 November 2003, State Administration of Taxation promulgated Circular on Issues Regarding Enjoyment of “Two Intensiveness” Preferential Tax Treatment by Foreign Invested Enterprises (“关于外商投资企业享受“两个密集型”税收优惠政策有关问题的通知”), which has taken effect as of 1 January 2003. According to the circular, “two intensiveness” refers to technology-intensive and knowledge-

intensive. Foreign invested enterprises invoking “two intensiveness” as basis of entitlement to preferential tax treatment shall prove that their pillar products are included in the China Catalogue of High Technology Products (“中国高科技产品目录”, 2000) and that the annual sale income of such products has exceeded 50% of the total sale income of that year. In the year of 50% requirement not satisfied, the enterprise is not able to enjoy the preferential policies. (www.law-lib.com)

CIETAC Established Arbitration Center for Grain Disputes

On 20 November 2003, State Grain Administration announced that the Arbitration Center for Grain Disputes would be established under China International Economic and Trade Arbitration Commission (CIETAC). The imminent mandate of the Center is to assist CIETAC to draft Arbitration Rules for Grain Disputes and prepare separate rolls of arbitrators. (www.chinagrain.gov.cn)

MII Clarification on Qualification of Domain Name Registration Business

Recently, Ministry of Information Industry promulgated Announcement on Interpretation of Rules Applied to Qualification of Service Providers of Domain Name Registration (“关于从事域名注册服务经营者应具备条件法律适用解释的通告”). According to the Announcement, requirements for qualified service providers set out in Article 12 of Provisions on Administration of Domain Names in China (“中国互联网域名管理规定”, 2002) mainly include: (1) duly incorporated as enterprise legal persons or institution legal persons with the permit to conduct ICP business; and (2) registered capital is no less than RMB 1 million; and (3) technical staff for domain name registration are no less 5, customers service staff are no less than 20; and (4) equipped with special DNS; and (5) protected by safeguards against physical harm to servers and cyber attacks. (www.mii.gov.cn)

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